



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At the oral argument to the Board, the parties agreed that the portion of the ALJ's Award granting temporary total disability compensation (TTD) during the period September 30, 2003, through October 20, 2003, was incorrect as to the dates, but correct as to the number of weeks and amounts paid. Claimant is alleging entitlement to temporary partial disability compensation (TPD) beginning October 20, 2003, and claimant would not be eligible for both TTD and TPD on the same date. At oral argument before the Board, the parties agreed that the TTD payments were for an unidentified three-week period preceding the October 20, 2003 date and claimant is requesting no additional TTD.

The parties further agreed that the TPD period in dispute begins October 20, 2003, the date claimant returned to work for respondent but was precluded by medical restrictions from working overtime. The parties further agreed the TPD period in question ended December 8, 2003, the last date claimant was ineligible for overtime. The parties then agreed that the period from October 20, 2003, through December 8, 2003, comprised 50 days, or 7.14 weeks.

Respondent then agreed that, with claimant's stipulated average weekly wage of \$2,144.00 (when compared to the agreed wage of \$32.00 per hour over a 40-hour week that claimant was earning while returned to work but restricted to no overtime), claimant would be eligible for TPD for the 7.14 weeks in question. The parties acknowledged that the TPD rate would be the \$432.00 maximum weekly benefit rate allowed under the statute for a February 12, 2003 date of accident. Respondent acknowledged that the TPD weeks, when offset from the whole body award earlier stipulated to by the parties on November 27, 2006, would have no effect, since the 7.14 weeks of TPD, when added to the 3 weeks of TTD, would not exceed the 15-week limit set forth in K.S.A. 44-510e(a)(2).

The Board finds that the Award of the ALJ, which deducted the 3 weeks of TTD from the 27.5 percent award for claimant's right upper extremity at the shoulder, violates the "Stipulated Submission Of Case" filed by the parties with the Division of Workers Compensation on November 27, 2006. No TTD was deducted from the parties' agreed calculations for that injury and stipulated award. The Board determines from the parties' stipulations, and the comments of counsel at the oral argument before the Board, that the TTD and TPD weeks are to be included in the calculations for the 3 percent whole body disability award for the injuries to claimant's neck. The Award of the ALJ will be modified accordingly.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated January 9, 2007, should be, and is hereby, modified consistent with the above findings and stipulations.

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Garry D. Stallard, and against the respondent, General Motors Corporation, and its insurance carrier, General Motors Corporation, for an accidental injury which occurred on February 12, 2003, and based upon an average weekly wage of \$2,144.00 and a 27.5 percent permanent partial disability to the right upper extremity at the level of the shoulder for 61.875 weeks permanent partial disability at the rate of \$432.00 for an award of \$26,730.00.

Additionally, claimant is awarded 3 weeks of temporary total disability at the rate of \$432.00 totaling \$1,296.00 and 7.14 weeks of temporary partial disability at the rate of \$432.00 totaling \$3,084.48, followed by 12.45 weeks permanent partial disability at the rate of \$432.00 totaling \$5,378.40, for a total award of \$9,758.88, for a 3 percent permanent partial whole body disability for the injuries suffered to claimant's neck on February 12, 2003. As of the date of this Order, the amounts above identified are due and owing, and ordered paid in one lump sum, minus any amounts already paid. In all other regards, the Award of the ALJ is affirmed insofar as it does not contradict the findings and conclusions contained herein.

Although the ALJ's Award approves claimant's contract of employment with her attorney, the record does not contain a filed fee agreement between claimant and claimant's attorney. K.S.A. 44-536(b) mandates that the written contract between the employee and the attorney be filed with the Director for review and approval. Should claimant's counsel desire a fee be approved in this matter, he must file and submit his written contract with claimant to the ALJ for approval.<sup>1</sup>

**IT IS SO ORDERED.**

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<sup>1</sup> K.S.A. 44-536(b).

Dated this \_\_\_\_ day of April, 2007.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Robert V. Wells, Attorney for Claimant  
       Peter J. Chung, Attorney for Respondent  
       Robert H. Foerschler, Administrative Law Judge